

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5965 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RASILABEN H PAGHADAR

Versus

MR SHAH/DIST PRIMARY EDUCATIONOFFICER.

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Appearance:

MR AD PADIVAL for Petitioner

MS SEJAL K MANDAVIA for Respondent No. 1

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 09/09/96

ORAL JUDGEMENT

1. Heard learned advocates for the parties. The petitioner a Primary Teacher was appointed as such under the order dated 30th March,1987 and was posted at Rasulpura. She however, made request to transfer her at a suitable place and accordingly under order dated 30th May,1996, she was transferred to Primary School,Gundaran. The said order was subsequently cancelled under order dated 7th August,1996 whereunder the petitioner's

transfer to Gundaran has been cancelled and she has been re-transferred to Rasulpura which is the subject matter of challenge in this petition.

2. Learned advocate Mr.Padiwal appearing for the petitioner has submitted that after a long wait, considering the petitioner's hardships, petitioner was transferred to Gundaran and she should not have been disturbed for atleast 10 years in view of the government instructions contained in circular dated 1st December,1994. He has further submitted that the impugned order dated 7th August,1996 refer to the petitioners request for re-transfer to Rasulpura which is not correct and which shows non-application of mind on behalf of the respondent-authorities. He further submits, that before cancelling the order of transfer made in favour of the petitioner, the petitioner has not been afforded an opportunity of hearing, which is basic tenet of the Constitution of India. He has further submitted that the court should not rely upon the affidavit made by the Deputy District Primary Education Officer in reply to the petition since he is not officer competent to make such an affidavit. I am afraid, I cannot accept the contentions raised by learned advocate Mr.Padiwal.

3. The Deputy District Primary Education Officer Shri V.K.Ahir has made an affidavit in reply to the petition. It has been stated that the inquiry into the transfers made on 30 th May,1996 was entrusted to said Shri Ahir and it was he who investigated into the matter and submitted his report to the District Development Officer. In view of the fact I cannot hold that Shri Ahir is not competent to make the affidavit as alleged by Mr.Padiwal. It must be noted that Shri Ahir has made an investigation into the transfers made on 30th May,1996 and he cannot be said to be unaware of the facts stated in the affidavit. Learned advocate Miss.Mandavia appearing for the respondent has submitted that under the impugned order dated 7th August,1996, as many as 16 Primary Teachers have been transferred. Of the said 16 Primary Teachers, 15 are the teachers who have been transferred according to their request. However, against the name of the petitioner, it has been stated that she has been transferred on account of cancellation of the original order of her transfer. She therefore, submits that the statement made that the Primary Teachers have been transferred at their request and that they would not be entitled to the allowances and the joining time does not apply to the petitioner herein. In view of the said statement, the order cannot be said to have been made

without application of mind. Further, the order of transfer or re-transfer is an administrative order and the principles of natural justice are not attracted in such matters. Mr.Padiwal's contention that such order entails civil and evil consequences, and that in due deference to the principle of " Audi Alteram partem" the person concerned is required to be heard requires to be rejected. He has further contended that in view of the instructions contained in Government Circular dtd. 1st December,1994 prior approval of Government was required before making such transfer. It must be noted that these orders of transfer made on 30th May,1996 were required to be investigated on account of the instructions issued by the Government and in view of the said instructions, the orders have been cancelled. Thus, the question of prior approval of the Government does not arise.

4. In the affidavit made by Shri V.K.Ahir, it has been mentioned that large number of Primary Teachers were transferred on 30th May,1996 by the District Primary Education Officer and several complaints were made against such transfers. In view of the said complaints, an investigation was ordered by the Director of Primary Education and the same was entrusted to Shri V.K.Ahir. Upon investigation, it was learnt that the transfers made on 30th May,1996 were in contravention of the instructions contained in the above referred circular dated 1st December,1994. Ms.Mandvia has produced a copy of the report submitted by Shri V.K.Ahir. In view of paragraph 8 of the circular dated 1st December,1994, a Primary Teacher rendered surplus should be transferred to another school under the same Pay Centre and if such a vacancy is not available under the same Pay Centre, the Primary Teacher should be transferred in the same Taluka. In the present case the petitioner was rendered surplus at Rasulpura,however, there was another vacancy at Amrutpur under the same Pay Centre and the petitioner ought to have been transferred to Amrutpur. In view of the register of request transfer maintained by the District Primary Education Officer, there were other prior claims of request-transfer to Gundaran. Considering such prior cases, even if there were a vacancy at Primary School,Gundaran, the petitioner could not have been transferred there inspite of her request. Thus,the petitioner's transfer at Gundran has been found to be made in violation of the instructions contained in the circular dated 1st December,1994.

5. In view of such irregularities, if the order of transfer made on 30th May,1996 has been cancelled, the same cannot be said to be unlawful in any manner. The

petitioner, therefore, does not require to be protected against the impugned order of transfer dated 7th August,1996.

6. The petition is therefore, summarily rejected. Ad interim order is vacated. Notice is discharged.

7. Learned advocate Mr.Padiwal requests that the ad interim order made earlier be continued for a period of 2 weeks. Request is granted. The ad interim order made earlier shall continue upto 23rd September,1996.

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